**THE HON'BLE DR JUSTICE G.YETHIRAJULU**

**Writ Petition No: 16832 of 1995**

**Date:28-04-2006**

Between:

S. Satyanarayana
S/o Yadagiri, aged 30 years, un-employee,

R/o Malkajgiri village and Mandal,

Hyderabad

**... PETITIONER**

AND

1. The Labour Court-III,
Chandralok Complex,

M. J. Road,
Hyderabad, rep. by its Presiding Officer.

2. M/s. Electronics Corporation of India Ltd.,
Moulali, rep. by its Managing Director.

**...RESPONDENTS**

**THE HON'BLE Dr. JUSTICE G.YETHIRAJULU**

**W.P.No.16832 of 1995**

**ORDER:**

This Writ Petition is filed to issue a writ of Certiorari by calling for the records relating to the Award passed in I.D.No.188 of 1993, dated 02-03-1995 and to quash the same with a direction to the second respondent to reinstate the petitioner into service with all consequential benefits.

2. The averments of the affidavit filed in support of the petition are briefly as follows:-

The petitioner was appointed as a Helper on casual basis by the second respondent on a monthly salary of Rs.500/-.
He was continually discharging his duties from December, 1982 to 05-12-1985. He filed W.P.No.11295 of 1986 when the second respondent wanted to terminate his services. He obtained interim orders in W.P.M.P.No.14808 of 1986 on 13-09-1986 and by virtue of the interim order, the second respondent reinstated him into service. The writ petition was disposed of on 05-10-1988 with a direction to approach the labour Court for adjudication. His services were terminated by the second respondent immediately after receiving the above order. He raised a dispute covered by I.D.No.420 of 1989 before Labour Court No.I, Hyderabad, which was transferred to Labour Court No.III and renumbered as I.D.No.188 of 1993. He filed Exs.W-1, W-2, W-7 and W-10 his service certificates issued by the second respondent to substantiate his employment. He also filed Exs.W-4, W-8 and W-11 granting entry permit to discharge the duties and Ex.W-7 to provide the facility of the travel through the company bus. The second respondent admitted categorically in Ex.W-6 that the petitioner worked as a Casual Labour in the second respondent-organization. The first respondent after conducting an enquiry passed the Award dismissing the I.D. on 02-03-1995. The petitioner, being aggrieved by the award of the labour Court, filed the present writ petition seeking the reliefs mentioned above.

3. The point for consideration is whether the petitioner is entitled for the reliefs as prayed for?

4. Before the labour Court, the petitioner contended that he was appointed as a Helper on casual basis by the second respondent to work in ECIL on a monthly pay of Rs.550/-. Though he worked continuously from 1982 to December, 1985, his services were terminated without any notice, as such, it amounts to retrenchment

within the meaning of Section 2 (oo) of the Industrial Disputes Act, 1947, (for short 'the Act'). Hence, the prayer to order the reinstatement with continuity of service.

5. In the counter affidavit, the second respondent contended that the petitioner was never engaged by the second respondent-organization at any time. It appears that the petitioner was engaged by one Ch. Ramaiah, who was given some contract for removal of scrap material in the factory premises, and the contractor in turn used to pay the remuneration to the petitioner. The petitioner in order to establish that he was appointed as a Casual worker on daily wage basis was examined himself as WW-1 and relied on
Exs.W-1, W-2, W-9 and W-10 service certificates in proof of employment in ECIL. He also relied on the entry passes given to him and bus passes issued to him to travel in the company bus.

6. The second respondent examined MWs.1 and 2 who are supervisory and managerial staff. Ex.M-1 document is filed to show that contractor was engaged, who engaged the petitioner as casual labour to handle the scrap material on cart. Exs.M-4 and M-5 are vouchers relating to payment of labour charges to Ramaiah. Ex.M-6 the copy of muster rolls of the casual workers, who worked in ECIL, does not show that the petitioner worked as a Casual Labour during the relevant point of time i.e., from 1982 to 1985.

7. The adjudication of dispute is for the period from 1982 to December 1985. So the entry passes and service certificates are not relevant which were issued in 1985 and 1989. Similarly, the alleged admission of the petitioner in the affidavit of the writ petition that the petitioner worked as casual workman has no significance. It is categorically stated that the petitioner was engaged by the contractor and he worked under him.

8. Ex.W-1 relied on by the petitioner is a certificate dated
16-01-1985 and another certificate dated 11-03-1985 issued by the Deputy General Manager, C.E.G. which states that the petitioner worked as a Contract Labour and his work is satisfactory during the relevant period.

9. The respondent's main contentions is that Exs.M-1 to M-6 shows that there is no relationship of employer and employee existed at any time and to attract Section 25 (F) of the Act.

10. After considering the entire evidence, the labour Court held that there is no relationship of employer and employee that exists to attract the definition of Section 25 (F) of the Act and Exs.W-1 and W-2 certificates are not binding on the respondent as the same were not issued officially. Those certificates do not indicate that the petitioner was employed by the second respondent directly. Exs.M-4 and M-5 vouchers show that Ramaiah was collecting the amount for the contract work. Thus Exs.W-1 and W-2 cannot establish the relationship of employer and employee to have any protection as workman. Ex.M-6 copies of the muster rolls of the casual labour workers during the relevant period negatives the contention of the petitioner that he was a workman and employed directly in the organization of the respondent. By making the above observation, the labour Court dismissed the claim of the petitioner as not maintainable.

11. Learned counsel for the petitioner in order to impress upon this Court relied on the following decisions that the workman under the contractor is also a workman under the second respondent and as the second respondent failed to follow the procedure prescribed under Section 25 (F) of the Act, the award of the Industrial Tribunal is liable to be set aside.

12. In **EMPLOYERS – MANAGEMENT OF SUDAMDIH COLLIERY v. WORKMEN REP. BY R.C. MAZDOOR SANGH** , the Supreme Court after examining the case, directed to remit the matter back to the High Court for re-examination in view of the decision laid down in **STEEL AUTHORITY OF INDIA LTD. AND OTHERS. v. NATIONAL UNION WATERFRONG WORKERS AND OTHERS** .

13. In **INDIAN OVERSEAS BANK v. I.O.B. STAFF CANTEEN WORKERS' UNION AND ANOTHER** , the Supreme Court examined the employer and employee relationship. In this case the Cooperative Canteen was promoted and administered, with the consent of the management of the bank by serving members of the bank staff. It was running within the Bank's premises with the funds, subsidy and infrastructural facilities provided exclusively by the Bank. It observed the working hours and holidays of the Bank and provided service to bank employees only. It was preceded, and after 17 years working when closed, was succeeded by a canteen run by a contractor engaged by the management of the Bank. In such circumstances, held that the bank had voluntarily undertaken an obligation to provide the canteen services to its employees. More so, when the canteen workers were enlisted under a

Welfare Fund Scheme of the bank, they were eligible for periodical medical check-up by doctors of the Bank and were covered by Provident Fund Scheme. Hence, all the factors cumulatively provided sufficient basis for Industrial Tribunal's finding that the employees of the canteen run by the cooperative society were the employees of the Bank. The Supreme Court further held that in view of the permanent need to provide canteen services, Bank's request for awarding compensation in lieu of relief of reinstatement.

14. In **BHAGABAND COLLERY v. THEIR WORKMEN** , a colliery recruiting miners through persons called sirdars. Such sirdars also performing supervisory duties over the miners so recruited through them. Such sirdars paid commission at a particular rate on the production by the miners recruited through them and also a fixed payment per 100 tugs called "sirdari". The sirdars doing such work besides their normal and permanent employment under the same company. The sirdars, in the circumstances, held, the workmen qua the colliery in respect of their supervisory work and the commission paid to them, held, wages as defined in Section 2 (rr) of the Act.

15. In **INDIAN BANKS ASSN. V. WORKMEN OF SYNDICATE BANK** , the Supreme Court held that the question whether the Commission Agents or Deposit Collectors employed in the specified banks were entitled to pay scales, allowance and other service conditions available to regular clerical employees of those banks, and further question as to what relief they were otherwise entitled to, were referred by the Central government to the Industrial Tribunal. The Industrial Tribunal, subject to certain conditions, directed such of the Deposit Collectors and Commission Agents as were below the age of 45 years to be absorbed as clerks and cashiers. The relevant evidence indicates that the Industrial Tribunal correctly arrived at the conclusion that the Deposit Collectors of the banks were workmen.

16. In **D.C. WORKS LTD. V. STATEOF SAURASHTRA** , the Supreme Court laid down the test to decide whether a person working under a contractor is a workman of the company. The Supreme Court observed as follows:

> "The essential condition of a person being a workman within the terms of the definition in S. 2 (s), is that he should be employed to do the work in the industry, that there should be, in other words, an employment of his by the employer that there should be the relationship between the employer and him as between employer and employee or master and servant. Unless a person

is thus employed there can be no question of his being a workman within the definition of the terms as contained in the Act. The prima facie test for the determination of relationship between master and servant is the existence of the right in the master to supervise and control the work done by the servant not only in the matter of directing what work the servant is to do but also the manner in which he shall do his work.

The Supreme Court further held that:

> "The broad distinction between a workman and independent contractor lies in this that while the former agrees himself to work, the latter agrees to get other persons to work. Now a person who agrees himself to work and does so work and is therefore a workman does not cease to be such by reason merely of the fact that he gets other persons to work along with him and that those persons are controlled and paid by him. What determines whether a person is a workman or an independent contractor is whether he has agreed to work personally or not. If he has, then he is a workman and the fact that he takes assistance from other persons would not affect his status."

17. In **GOPALA RAO v. PUBLIC PROSECUTOR, A.P.** ,
sun-cured tobacco leaves subjected to processes of moistening, stripping and packing in a company's premises with a view to their use and transport to company's main factory for manufacturing cigarettes. More than 20 persons under supervision of management working in premises. The Supreme Court held that the manufacturing process was carried on in premises and the persons employed were "workers" and premises a "factory".

18. In **RAM SINGH v. UNION TERRITORY, CHANDIGARH** , the Supreme Court held that the contract employees claiming regularization of their services under the Engineering Department of the administration. Such a contract whether genuine, sham or camouflage can only be determined by the industrial forum since it involves a finding as to the *inter se* relationship between the administration, the contractor and the contract employees.

The Supreme Court further held that:

> "In determining the relationship of employer employee, no doubt "control" is one of the important tests but is not to be taken as the sole test.

> All other relevant facts and circumstances are required to be considered including the terms and conditions of the contract. It is necessary to take a multiple pragmatic approach weighing up all the factors for and against an employment instead of going by the sole "test of control". An integrated approach is needed.

19. In **J.K. COTTON SPG. & WVG. MILLS CO. v. L.A. TRIBUNAL OF INDIA** , the Supreme Court held that:

> "In the modern world industrial operations have become complex and complicated and for the efficient and successful functioning of any industry, several incidental operations are called in aid and it is the totality of all these operations that ultimately constitutes the industry as a whole. Wherever it is shown that the industry has employed an employee to assist one or the other operation incidental to the main industrial operation, it would be unreasonable to deny such an employee the status of a workman on the ground that his work is not directly concerned with the main work or operation of the industry."

20. In **BIRDHICHAND v. FIRST CIVIL JUDGE** , the Supreme Court laid down the tests whether the workmen worked at bidi factory and were not at liberty to work at their homes. Further they worked within certain hours which were the factory hours, though they were not bound to work for the entire period and could go away whenever they liked. Their attendance was noted in the factory and they could come and go away at any time they liked but if any of them came after midday he was not supplied with tobacco and was thus not allowed to work, even though factory was closed at 7 P.M. in accordance with the provision of the Factories Act. The payment was made on piece-rates according to the amount of work done but the management had the right to reject such biris as did not come up to the proper standard and held that the respondents could not be said to be independent contractors but were the workers within the meaning of Section 2 (1) of the Factories Act.

21. In **ESHWAR SINGH v. R.S.E.B.** , the Supreme Court held that to consider a person as workman, employment must be in industry carried on by the employer. Control and supervision by employer over employee necessary to constitute employer employee relationship. Right to remove person from engagement, is one test manifesting control. Person employed, as orderly in residence of Assistant Engineer or other officer of Electricity Board for rendering services to another person

employed by same employer held nonetheless workman of employer Board.

22. In **STEEL AUTHORITY OF INDIA LTD. V. NATIONAL UNION WATERFRONT WORKERS** (2 supra), the Supreme Court held that:

> "By definition the term "contract labour" is a species of workman. Where a workman is hired in or in connection with the work of an establishment by the principal employer through a contractor, he merely acts as an agent so there will be master-and-servant relationship between the principal employer and the workman. But where a workman is hired in or in connection with the work of an establishment by a contractor, either because he has undertaken to produce a given result for the establishment or because he supplies workmen for any work of the establishment, a question might arise whether the contractor is a mere camouflage, if the answer is in the affirmative, the workman will be in fact an employee of the principal employer; but if the answer is in the negative, the workman will be a contract labour."

23. In **M/s. SHINING TAILORS v. INDUSTRIAL TRIBUNAL, U.P.** , the Supreme Court held that:

> "Tailors working on piece rate basis in a big tailoring establishment are workmen of the owner of the establishment. Every piece rated workman is not an independent contractor. Piece rate payment meaning thereby payment correlated to production is a well-recognized mode of payment to industrial workmen. The employer's right to reject the end product if it does not conform to the instruction of the employer speaks for the element of control and supervision. So also right of removal of the workman or not to give the work has the element of control and supervision. The right of rejection coupled with the right to refuse work would certainly establish master-servant relationship."

24. In **M/s. P.M. PATEL & SONS v. UNION OF INDIA** , the Supreme Court held:

> "The terms of the definition of "employee" are wide. They include not only persons employed directly by the employer but also persons employed through a contractor. Moreover, they include not only persons employed in the factory but also persons employed in connection with the work of the factory. Accordingly, a home worker, by virtue of the fact that he rolls beedis, is involved in an activity connected with the work of the factory engaged in the task of rolling beedies. In this view, the words "in connection with" in the definition of "employee" cannot be confined to work performed in the factory itself as a part of the total process of the manufacture."

25. In **SHANKAR BALAJI v. STAET OF MAHARASHTRA** , the Supreme Court held that the workers employed for rolling Bidis have no obligation to work in the factory. They have freedom to attend and left the factory at any time. The payment used to be made on the basis of piece work and quantity to be turned out per day not fixed. The Supreme Court held that the Bidi roller is not a workman within Section 2 (1) of Factories Act, 1948.

26. In **CHINTAMAN RAO v. STATE OF M.P.,** the Supreme Court held that:

> "The concept of employment involves three ingredients: (1) employer (2) employee and (3) the contract of employment. The employer is one who employs, i.e., one who engages the services of other persons. The employee is one who works for another for hire. The employment is the contract of service between the employer and the employee whereunder the employee agrees to serve the employer subject to his control and supervision."

27. In **WORKMEN OF FOOD CORPORATION OF INDIA v. M/s. FOOD CORPORATION OF INDIA ,** the Supreme Court held that:

> "The essential condition of a person being a workman within the terms of the definition is that he should be employed to do the work in that industry and that there should be, in other words, an employment of his by the employer and that there should be a relationship between the employer and him as between employer and employees or master and servant. Unless a person is thus employed there can be no question of his being a 'workman' within the definition of the terms as contained in the Act."

28. In **S.J.T. HOUSE v. C.I., SHOPS & ESTABLISHMENTS** , the Supreme Court held that:

> "The right to control the manner of work is not the exclusive test for determining the relationship of employer and employee. It is also to be considered as to who provides the equipment. It might be that little weight can nowadays be put upon the provisions of tools of minor character as opposed to plant and equipment on a large scale. But so far as tailoring is concerned, the fact that sewing machines on which the workers do the work generally belong to the employer is an important consideration for deciding that the relationship is that of master and servant."

29. Learned counsel for the second respondent relied on the following decisions in support of his contention that the petitioner is not the workman of the second respondent.

30. In **SK. ALI v. MANAGING DIRECTOR, BHARATH HEAVY PLATES & VESSELS LTD.** , a Division Bench of this Court, while dealing with Section 10 of Contract Labour (Regulation and Prohibition) Act, 1970, held as follows:

> "In the event of the contractors been appointed by a company in terms of the provisions of the Act, question of regularization of the services of the contract labourers by the principal employer would not arise. In such a case, in the event, a representation is made before the appropriate Government for abolition of contract labour, a notification must be issued by the appropriate Government in terms of sub-section (1) of Section 10 of the Act. A bare perusal of the aforementioned provisions clearly show that it is only the appropriate Government which can issue such notification and it is not for the Court to do so.
>
> Once it is held that a contractor has legally been appointed, the court, cannot indirectly ask the principal employer to terminate the said contract by issuing a direction to the effect that his labourers should be regularized.

31. In **S.A.I.L. v. NATIONAL UNION WATER FRONT WORKERS** , the Supreme Court held as follows:-

> "Neither Section 10 of the CLRA Act nor any other provision in the act, whether the expressly or by necessary implication, provides for automatic absorption of contract labour on issuing a notification by appropriate Government under sub-section (1) of Section 10, prohibiting employment of contract labour, in any process, operation or other work in any establishment consequently the principal employer cannot be required to order absorption of the contract labour working in the concerned establishment."

32. In **WORKMEN OF NILGIRI COOP. MKT. SOCIETY LTD. v. STATE OF T.N.** , the Supreme Court held as follows:-

> "Determination of the vexed questions as to whether a contract is a contract of service or contract for service and whether the employees concerned are employees of the contractors has never been an easy task. No decision of the Supreme Court has laid down any hard-and-fast rule nor is it possible to do so. The question in each case has to be answered having regard to the fact involved therein. No single test – be it control test, be it organization or any other test has been held to be the determinative factor for

> determining the jural relationship of employer and employee. There are cases arising on the borderline between what is clearly an employer-employee relation and what is clearly an independent entrepreneurial dealing. Different tests have been applied in different cases having regard to the nature of the problem arising in the fact situation obtaining therein. Emphasis on application of control test and organization test has been laid keeping in view the question as to whether the matter involves a contract of service vis-à-vis contract for service; or whether the employer had set up a contractor for the purpose of employment of workmen by way of a smokescreen with a view to avoid its statutory liability. Supervision and control test is the prima facie test for determining the relationship of employment. The nature of extent of control required to establish such relationship would vary from business to business and, thus, cannot be given a precise definition. The nature of business for the said purpose is also a relevant factor."

33. From the above decisions, the legal position is very clear that the workman of a contractor do not get automatic absorption as workman of employer.

34. Where a workman is hired in or in connection with the work of an establishment by a contractor, either because he has undertaken to produce a given result for the establishment or because he supplies workmen for any work of the establishment, a question might arise whether the contractor is a mere camouflage, if the answer is in the affirmative, the workman will be in fact an employee of the principal employer, but if the answer is in the negative, the workman will be a contract labour, therefore, it is not possible to perceive in Section 10 any implicit requirement of automatic absorption of contract labour by the principal employer in the establishment concerned on issuance of notification by the appropriate Government under Section 10 (1) prohibiting employment of contract labour in a given establishment. Consequently, the principal employer cannot be required to order absorption of the contract labour working in the establishment concerned.

35. In this writ petition, it is the specific contention of the second respondent that the petitioner was engaged by one
Ch. Ramaiah, who was given some contract for removal of scrap material in the factory premises and the contractor in turn used to pay the remuneration to the petitioner.

36. It is further contended by the petitioner that he was appointed as a Helper on casual basis by the second respondent to work in ECIL on a monthly pay of Rs.550/-

. Though he worked continuously from 1982 to December, 1985, his services were terminated without any notice, as such, it amounts to retrenchment within the meaning of 2 (oo) of the Act.

37. The second respondent filed Ex.M-1 document to show that a contractor was engaged, who in turn engaged the petitioner as casual labour to handle the scrap material on cart. Exs.M-4 and M-5 are vouchers relating to payment of labour charges given to Ramaiah. Ex.M-6 copy of the muster rolls of casual workers who worked in ECIL does not show that the petitioner worked as a casual labour during the relevant point of time.

38. In view of the above factual position and in view of the legal position, the petitioner is not entitled to be recognized as a workman of the second respondent automatically. There is no material to show that the work entrusted to the contractor is perennial.

39. The lower Court, after applying all the tests, held that there is no relationship of employer and employee that existed to attract the definition of Section 2 (s) read with Section 25 (F) of the Act. The certificates issued by the officers of the company are not binding on the second respondent as they were issued in their individual capacity and not officially. Exs.W-1 and W-2 are not establishing the relationship of employer and employee to have any protection as workman. Ex.M-6 copies of the muster rolls of the casual workers worked during the relevant period negatives the contention of the petitioner that he was a workman and employed by the second respondent. The lower Court, accordingly, held that the petition is not maintainable either in fact or law.

40. After carefully going through the legal position and the award passed by the labour Court, I find no grounds to interfere with the order of the labour Court, dated 02-03-1995.

41. In the result, the Writ Petition is dismissed. No order as to costs.

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**Dr. G.YETHIRAJULU, J**

Date:28-04-2006

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